IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Serial No. 09/870,377

Filed: May 30, 2001

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VEHICLE RADIO SYSTEM WITH
CUSTOMIZED ADVERTISING

Filed via EFS

Group Art Unit: 3622

Examiner: Janvier, Jean D.

REPLY BRIEF

Board of Patent Appeals and Interference
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sirs:

This Reply Brief is being filed in response to the Examiner's Answer.

Response to Examiner's Comments

The following comments are being submitted in reply to certain of the Examiner's arguments contained in the Examiner's Answer.

Beginning at Page 14 of the Examiner's Answer, the Examiner refers to Applicant's argument that Dimitriadis does not expressly or inherently disclose the claimed use of marker data. In particular, Applicant has pointed out that Dimitriadis makes no mention whatsoever of the use of a marker in the broadcast stream to identify an advertising slot, and has further noted that such an approach to inserting advertising is not inherent. In response, the Examiner states that he has interpreted "marker data" to include "any triggering signal, event, condition, such as a

break in the broadcast stream, which signals when to play or display a content or advertising." (Examiner's Answer, page 14, last paragraph.) Thus, argues the Examiner, if, as noted by Applicant at the top of page 13 of the Second Revised Appeal Brief (Appeal Brief), Dimitriadis plays its advertisements at breaks between content, then it is using marker data (breaks in content) to identify the location at which to play an advertisement. Applicant notes two problems with this analysis by the Examiner.

First, the Examiner has now identified four different aspects of Dimitriadis' system as being the marker data. In the main rejection on Page 3 of the Examiner's Answer, the Examiner identifies the presentation command (500c) as the recited "marker data," then goes on to identify the presentation conditions (presumably, condition list 400b) as "marker data," then states at Page 18 that the index values (400a) are "marker data," and now asserts that possible breaks in content in the radio broadcast (22) are the "marker data." Applicant asserts that none of these items constitute the "marker data" recited in the claims. Taking each of these four items one at a time, (1) as explained in the second paragraph of Page 11 of the Appeal Brief, the PRESENT command is a command supplied in a separate data broadcast stream that tells the system to queue an advertisement for playback. It is not contained in the broadcast stream being played, so that played broadcast stream is not being monitored for it, nor does the command identify or otherwise indicate an advertising slot in the played broadcast stream. (2) The condition list (or presentation conditions as they are called by the Examiner) are data items associated with each advertisement that tells the device 40 under what conditions (e.g., time of day, geographic location) to play the associated advertisement. This is described at Col. 5, line 66, to Col. 6, line 8 of Dimitriadis. This data is not marker data indicative of an advertising slot in a broadcast stream, nor is it otherwise used as marker data in the manner recited in Applicant's claims. (3) Nor are the index values marker data. Rather, the index values each uniquely identify one stored advertisement from another so that the microprocessor can specify which are to be accessed from memory. See Col. 5, lines 3-15 and 52-65. (4) Finally, the "breaks" or silence between content in the radio broadcast stream was an example given by Applicant as another way to insert advertising without the use of markers. Dimitriadis does not disclose that the radio voice broadcast 22 includes such breaks or that they are used to identify where to insert an advertisement. Rather, Applicant was simply pointing out that Dimitriadis does not inherently

disclose monitoring for marker data indicative of an advertising slot, as recited in claim 1. This leads to the second problem with the Examiner's analysis.

Assuming for the sake of argument that a break (silence) in the transmission stream could properly be construed as marker data (instead of, for example, identifying code as disclosed by Applicants in Fig. 7 and its associated description), it does not logically follow that Dimitriadis' system inherently uses these breaks or any other "marker data". Rather, it must be remembered that Dimitriadis is entirely silent as to how the advertisements would be inserted. Apart from the possibility that they could be inserted using markers in the radio voice broadcast 22, they could also be inserted in other ways. One such approach was noted in the Appeal Brief and has been conveniently ignored by the Examiner in his Answer; that is, by interrupting the programming – perhaps not a desirable approach, but possible nonetheless and clearly supported by Dimitriadis' teaching, as discussed in the next paragraph below. Other possible approaches that would be apparent to one skilled in the art would be to play the advertisement only upon switching of stations by the occupant, or at turn-on or turn-off of the device 40. The point is that inherency legally requires not possibilities or probabilities, but that the alleged inherent matter is necessarily present in the prior art being asserted against the claims. That situation does not exist here.

The Board's attention is also drawn to Fig. 2 of Dimitriadis as further support for Applicant's position that Dimitriadis does not inherently teach the use of marker data in the broadcast stream to identify the location of an advertising slot. As shown in that figure and explained at Col. 5, line 7-30, the microprocessor 60 provides the advertisement presentation block 104 with index values, each of which uniquely identifies one of the stored advertisements. Dimitriadis clearly discloses that these advertisements are queued, which would indicate to one skilled in the art that they are not (all) immediately played when their unique index value is supplied by the microprocessor 60. The advertisement presentation block 104 has direct access to the memory 90 to access the advertisement and plays it by sending it to the display or speaker amp 68, as appropriate. Nothing in this disclosure of the device 40 indicates that the presentation of these queued advertisements is synchronized with the content of the radio broadcast stream. Block 104 is only given an index (advertisement identifier) and not any indication of when to play the advertisement, and it does not monitor or otherwise receive the voice broadcast sent to

the speaker amplifier 68. Although the output of voice radio 64 is connected to the microprocessor 60, Dimitriadis makes it clear that this is to allow microprocessor to digitize some of the voice broadcast. See Col. 4, lines 58-61. Thus, if Dimitriadis indicates anything about the synchronization of advertising with the voice broadcast 22, it is that they are not – instead, it indicates that they are played independently (i.e., asynchronously), and therefore without the use of any type of marker data.

Finally, with regard to this issue of inherency, Applicant takes exception to the assertions made by the Examiner on Page 15 of the Examiner's Answer, wherein he asserts for the first time that it is widely practiced in radio and TV to "insert a trigger signal or marker data, such as a break, in a transmitted programming/signal or broadcast stream and the detection of the trigger signal at a remote location causes the retrieval and presentation of at least one commercial or ad at the remote location via a remote device." This is not disclosed in Dimitriadis (explicitly or inherently), nor has it been established as fact by any of the prior art of record or any other evidence in this case.

Additional Comments

There are numerous other assertions made in the Examiner's Answer for which a response and rebuttal is warranted; however, Applicant believes that these are adequately addressed by the discussion in the Appeal Brief for the different grouping of claims specified therein.

However, there is one additional distinguishing feature of independent claim 26 that is evident upon inspection of Dimitriadis' Fig. 2. Claim 26 recites, *inter alia*, that the "advertising control unit is operable to access one of the stored radio advertisements, with the accessed radio advertisement being inserted into the advertising slot identified by the received marker so that the accessed radio advertising is included within the audio content sent to the input of the vehicle radio." Thus, in the invention of claim 26, the audio content sent to the vehicle radio includes the received radio broadcast together with the inserted advertisement, whereas in Dimitriadis' system as shown in Fig. 2, the advertising is sent to the speaker amplifier 68 independently of the received voice broadcast. This difference has a practical advantage; namely, Applicant's system

can be used with conventional integrated vehicle radio/speaker systems without requiring modification to provide an auxiliary input to the amplifier.

Conclusion

In view of the foregoing, Appellant respectfully submits that the rejections of claims 1-13, 16-19, and 21-41 as being anticipated by Dimitriadis, and claims 14, 15, 20, and 42-45 over the combination of Dimitriadis and Hite are improper and should be overturned.

The Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this appeal brief to Deposit Account No. 07-0960.

Respectfully submitted,

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Date: June 11, 2007
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